

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEENAN ELLSBERRY,

Plaintiff,

v.

CITY OF DETROIT, et al.,

Defendants.

CIVIL ACTION NO. 12-10934

DISTRICT JUDGE GERALD E. ROSEN

MAGISTRATE JUDGE MARK A. RANDON

ORDER GRANTING DEFENDANT'S
MOTION TO SET ASIDE DEFAULT JUDGMENT

On May 30, 2012, the Clerk entered a Default as to Defendant Brian Terechenok. (Dkt. No. 22). Before the Court is Terechenok's Motion to Set Aside Default. (Dkt. No. 31). On August 17, 2012, District Judge Gerald E. Rosen referred the motion to this Magistrate Judge for a hearing and determination. (Dkt. No. 35). The Court heard oral argument on September 25, 2012; both Terechenok and his attorney failed to appear.

After reviewing the motion and considering Plaintiff's argument at the hearing on September 25, 2012, this Magistrate Judge finds good cause exists to **GRANT** Terechenok's motion. *See* Fed. R. Civ. P. 55(c) ("[t]he court may set aside an entry of default for good cause[.]"). While it took Terechenok approximately two months to act on Plaintiff's Complaint, he did immediately request representation once he was notified by the City of Detroit Law Department that he needed to do so¹. (Dkt. No. 31 at 2).

¹ Terechenok stated in his Affidavit that he has been "a party to a lawsuit only one time in [his] law enforcement career - approximately 10 years ago." (Dkt. No. 31; Ex. A at ¶3). However, a search of the lawsuits filed in federal court reveals that Terechenok was sued in 2009 - approximately three years ago. *See Ruston v. Terechenok*, Case No. 09-14673 (filed December 1, 2009).

However, because the default resulted from Terechenok's failure to timely take affirmative steps to obtain representation, the Court conditions the setting aside of the default upon payment to Plaintiff's attorney of his fees and costs in the amount of \$500.00. This amount must be paid by Terechenok personally within **21 days** from the date of this Order. In addition, Terrechenok must file an answer to Plaintiff's Complaint within **21 days** from the date of this Order.

IT IS ORDERED.

s/Mark A. Randon
Mark A. Randon
United States Magistrate Judge

Dated: September 25, 2012

Certificate of Service

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, September 25, 2012, by electronic and/or ordinary mail.

s/Melody Miles
Case Manager